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**1997 Wis Eth Bd 11**  
**IMPROPER USE OF OFFICE**

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The Ethics Board recommends that a state public official neither (1) hire or promote as an employee of the official's government office, nor (2) advocate the office's employment or promotion of, nor (3) exercise jurisdiction, supervision, or direction over the official's spouse. (September 29, 1997)

Facts

- ¶ 1. This opinion is based upon these understandings:
- a. You are a state public official who heads an office in a state agency.
  - b. Your spouse is a state employee in another office of the agency.
  - c. Your spouse has applied for employment as an assistant in your office.
  - d. If your spouse were hired for the position in your office your spouse would transfer to the position at the same salary and with the same benefits your spouse now receives.

Questions

- ¶ 2. The Ethics Board understands your questions to be:
1. Do laws administered by the Ethics Board prohibit your hiring your spouse as an assistant in your office?
  2. May you, consistent with the statutes administered by the Ethics Board, employ your spouse as your assistant if you are not involved in any way with the hiring?
  3. Does §946.13, *Wisconsin Statutes*, prohibit either of the above actions?

Discussion

¶ 3. We will address your first two questions. Your third question does not raise issues covered by laws administered by the Ethics Board. We refer you to the Attorney General for an answer to that question.

¶ 4. Three sections of Wisconsin's Code of Ethics for Public Officials and Employees are most pertinent to your questions. Reduced to their elements, §§19.45(2) and 19.46(1)(b), *Wisconsin Statutes*, provide:

No state public official  
May use his or her public position or office  
To obtain anything of substantial value  
Or produce or assist in the production of a substantial benefit  
For the official or his or her immediate family.<sup>1</sup>

Reduced to its elements, §19.46(1)(a), *Wisconsin Statutes*, provides:

No state public official  
May take any official action  
Substantially affecting a matter  
In which the official or a member of his or her immediate family  
Has a substantial financial interest.<sup>2</sup>

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<sup>1</sup> Sections 19.45(2) and 19.46(1)(b), *Wisconsin Statutes*, provide:

**19.45 (2)** No state public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. This subsection does not prohibit a state public official from using the title or prestige of his or her office to obtain contributions permitted and reported as required by ch. 11.

**19.46 (1)** Except in accordance with the board's advice under sub. (2) and except as otherwise provided in sub. (3), no state public official may:

(b) Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

<sup>2</sup> Section 19.46(1)(a), *Wisconsin Statutes*, provides:

**19.46 (1)** Except in accordance with the board's advice under sub. (2) and except as otherwise provided in sub. (3), no state public official may:

(a) Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.

¶ 5. You are a state public official.<sup>3</sup> Your exercising your authority to hire your spouse is a use of your office. Patently, the salary and benefits associated with the position your spouse seeks are things of substantial value and of personal benefit in which you and your spouse have a substantial financial interest even if your spouse were to transfer to a position in your office at the same salary as she now earns. Your spouse is a member of your immediate family.<sup>4</sup>

¶ 6. Even if you could totally disengage yourself from the hiring process or decision in your office, if your spouse were hired to be your assistant you would exercise supervision over your spouse and your spouse's work.<sup>5</sup>

¶ 7. Although the Ethics Board has long held the view that a person, otherwise qualified, should not be denied employment with the state because he or she is related to a public official,<sup>6</sup> the Board has consistently recommended that an official not be involved, directly or indirectly, in the hiring, promotion or supervision of a spouse.<sup>7</sup>

#### Advice

¶ 8. The Ethics Board recommends that you neither (1) hire or promote as an employee of your government office, nor (2) advocate your office's employment or promotion of, nor (3) exercise jurisdiction, supervision, or direction over your spouse.

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<sup>3</sup> Section 19.42(13)(c), *Wisconsin Statutes*, defines state public office to include all positions identified under §20.923(2), *Wisconsin Statutes*

<sup>4</sup> Section 19.42(7)(a), *Wisconsin Statutes*, provides that "immediate family" includes "[a]n individual's spouse."

<sup>5</sup> *Wisconsin Statutes* establish as duties of your office to hire, employ, and supervise staff.

<sup>6</sup> Policy Paper, 3 Annual Report and Opinions of the Ethics Board 39 (1980).

<sup>7</sup> *Id.*; 11 Op. Eth. Bd.15; Ethics Board Guideline Eth 233.